IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA,

Plaintiff, Case No. 10-CR-329-F

vs. Cheyenne, Wyoming
February 6, 2012

JOHN MICHAEL MORGAN, 4:00 p.m.

Defendant.

TRANSCRIPT OF SENTENCING PROCEEDINGS

BEFORE THE HONORABLE NANCY D. FREUDENTHAL
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: MR. L. ROBERT MURRAY
Assistant United States Attorney
UNITED STATES ATTORNEY'S OFFICE
District of Wyoming
2120 Capitol Avenue, Room 4000
P.O. Box 668
Cheyenne, Wyoming 82003

For the Defendant: MR. NICK E. BEDUHN
Attorney at Law
GOPPERT, SMITH & BEDUHN
1309 Sheridan Avenue
P.O. Box 880
Cody, Wyoming 82414-0880

Court Reporter: MRS. JANET DAVIS, RMR, FCRR
United States Court Reporter
2120 Capitol Avenue, Room 2228
Cheyenne, Wyoming 82001

Proceedings recorded by mechanical stenography, transcript produced with computer.

P R O C E E D I N G S

(Sentencing proceedings commenced 4:00 p.m., February 6, 2012.)

THE CLERK: In criminal matter Case No. 10-CR-329-6-F, United States of America versus John Michael Morgan, set today for sentencing.

Counsel, please state your appearances.

MR. MURRAY: Bob Murray for the United States.

MR. BEDUHN: Nick Beduhn for John Morgan, Your Honor.

THE COURT: Good afternoon. Mr. Beduhn, have you and Mr. Morgan read and discussed the Presentence Report?

MR. BEDUHN: Yes, we have.

THE COURT: And I apologize if we've covered some ground we covered before recess, but given the fact that I'm not particularly clear how far we got through the process, I will cover that same ground again.

Are there any factual issues concerning the Presentence Report?

MR. BEDUHN: No, Your Honor, there are not.

THE COURT: Are there any factual issues from the Government's perspective?

MR. MURRAY: No, Your Honor.

THE COURT: All right. The Court, then, will adopt the Presentence Report as its findings of fact.

Are there legal issues relevant to the guideline

calculations? And then after we get through the guideline calculations, we will deal with departure or variance requests.

MR. BEDUHN: No, Your Honor, there is not on behalf of Mr. Morgan.

THE COURT: Anything from the Government?

MR. MURRAY: No, Your Honor.

THE COURT: All right. We are here for sentencing for a base offense level for violation of the drug trafficking laws. The Court does note -- let me get my documents in order -- the plea agreement where the stipulated relevant conduct is at least 1 and a half kilograms but less than 5 kilograms of a mixture or substance of methamphetamine.

The Court, having sat through the trial in this matter and being familiar with the relevant conduct computed for Mr. Ordaz, Mr. Garcia and Mr. Renteria in terms of where they -- their base offense level started, after an independent investigation by Probation, those three gentlemen were assigned initially a base offense level of 32.

And at this time, considering that and to avoid unwarranted sentencing disparity, the Court will modify the base offense level from a level 34 to a level 32, notwithstanding the stipulated relevant conduct in the plea agreement.

Therefore, we're at an adjusted offense level of 32 with a three-level reduction for timely acceptance of

responsibility and for this defendant's assistance in the investigation and prosecution of his own conduct, the Court will grant a three-level reduction for -- under 3(E)1.1 arriving at a total offense level of 29.

There are no Chapter 4 enhancements applicable in this case.

The defendant's criminal history dates back to age 18 and age 19. He has two one-point convictions. He, however, was on probation when he committed the current offense or the offense that we're here to address, and so two points are added under the sentencing guidelines for a total of four criminal history points which establishes him at a Criminal History Category III.

I want to turn back to Counsel, given that the Court did make an adjustment to the base offense level, to afford Counsel an opportunity to put objections or argument on the record before I adopt the guideline calculations.

For the Government.

MR. MURRAY: Yes, Your Honor. I think ultimately it is really not going to matter because of the Government's recent filing of the substantial assistance motion; however, with regard to the quantity calculation and stipulation in the plea agreement, just wanted to point out for the Court, and it is included in the Presentence Report, is that there are quantities for which this defendant is responsible for after he

had finished his conspiracy with the Velasquez group, Mr. Ordaz.

The defendant, after being supplied methamphetamine from the Velasquez group, engaged in the second conspiracy for which I think he -- I don't know that he was charged, but he accepted responsibility for the additional quantity in that case, which would be the difference between the underlying Ordaz-Renteria case where the calculation was just under 1 and a half kilos, whereas here, including that additional amount as the parties stipulated to, would be over 1 and a half kilos.

Like I say, I don't know that that really matters ultimately because the Court can consider reducing the total offense level based upon the Government's motion for substantial assistance.

THE COURT: Ms. Danni, I don't believe I visited with you concerning this issue. I wanted to gain your observations as well after looking -- for some reason, maybe it was just the Prosecutor's Statement and my focus on the Velasquez conspiracy. I do recollect the testimony at trial where after Robert was in jail, I believe it was, Mr. Morgan turned to another source. But for some reason I still thought that was wrapped up with or imputed to this instant conspiracy. I do want to arrive at the correct relevant conduct.

THE PROBATION OFFICER: First of all, I would say when I first calculated John Michael Morgan's relevant conduct, it

far preceded the trial, the Velasquez, et al., trial. And a lot of the relevant conduct that I placed on him at that time I didn't have a specific quantity, and so a lot of it was based on reasonable foreseeability.

So now if I were to look at him like I looked at the others that came after him and gave him what was reasonably foreseeable now with all of the information we have, I would have placed him at the same relevant conduct, and I believe that's 1.143 kilograms.

Now, if we were to add what he went out and did after Mr. Velasquez was confined for his aggravated assault and in -- his drug trafficking continued, that was a different conspiracy and in visiting with some of the other officers and looking at what had happened in that trial -- or in that conspiracy, I think what we had concluded, that it was approximately 4 to 5 ounces.

Now, I wouldn't say that's absolutely true. I wouldn't bet my life on it. Even if we were to add that quantity, it wouldn't push him over the 1.5.

Now, at the time that I looked at him, I thought it was reasonably foreseeable, the 1.5 to 5. Now if I had looked at him at a different time, I think I would have had a more accurate figure. Now -- and I think Mr. Murray is correct, I think it is -- putting him to a level 32 I think it is somewhat semantics because at a level 29, Criminal History Category III,

I believe his guideline range, the mandatory minimum would still dictate and I think he would be 120 to 135. And so he's still at the 180 months with a consecutive 924(c).

So I would have to tell the Court I think what I did at the time is accurate. If the Court feels a revision on the relevant conduct is necessary, I completely understand that. And I would be happy to answer any other questions.

THE COURT: Well, I guess I thought I heard you say that had you done this after trial more in -- at a time more --

THE PROBATION OFFICER: Proximal to the other defendants.

THE COURT: Yeah, proximal to the other defendants that you would assign him a level 32 for relevant conduct.

THE PROBATION OFFICER: Yeah, I think I because we had more information, given the wiretaps and the wire transfers, and when that money trail ended, and as a group we decided to take a more conservative approach and cap it at the 40 ounces and that sort of a thing.

Is it altogether possible? And I think I even said in my response to Mr. Fun when he objected to the calculation I had made and that the other probation officer made relative to the codefendants that is it likely that that drug trafficking conspiracy continued? We believe that the Government wouldn't be wrong in saying that yes, it maybe did. But we don't have anything tangible to hang figures on that stands -- and that's

true for the cutting of the drugs as well. Did they probably cut that substance? Yeah, they probably did. How much, to what degree and how often, we just can't say with any certainty. So therein lies the conflict.

THE COURT: All right.

THE PROBATION OFFICER: And the inconsistency -- and I hope that clarifies it for the Court, and I will answer any other questions you might have.

THE COURT: I don't think so. Thank you.

Mr. Beduhn.

MR. BEDUHN: Your Honor, the other thing I would like to state is that we wouldn't object to the relevant conduct as calculated by the Court.

THE COURT: Thank you. Noting the Government's concerns about reducing the relevant conduct, I remain of the opinion that the best evidence in support of relevant conduct for this defendant's direct involvement as well as what is reasonably foreseeable to him through the scope of this conspiracy is better pegged to a level 32.

And so I will -- those, then, will be the Court's conclusions on the guideline calculation. Again, to summarize would be at a total offense level of 29 and a criminal history of III.

I did see the filing today of the Government's motion. Why don't we take that next where we move to the area of either

departure or variance arguments?

Mr. Murray, if you would like to address the Court.

MR. MURRAY: Yes, Your Honor, with regard to the defendant's advisory guideline calculations, they really at this point -- they don't matter because the defendant faces a 10-year mandatory minimum on the drug offense and a consecutive 5-year mandatory minimum on the gun offense. So notwithstanding the advisory guidelines or the quantity calculations, the defendant's offense level would become under the guidelines 120 months and above. So -- or 180 months and above.

When you look at the plea agreement in this case -- and I was not involved in the plea negotiations nor am I signator to the plea agreement. However, taking a look at this plea agreement, it is -- it contains an agreement on sentencing and substantial assistance that is unconventional to the office's usual practice, and I believe we arrived at that negotiated plea agreement largely intending a 15-year sentence because we were agreeing to dismiss a consecutive stacked 924(c) which is an additional 25 years incarceration.

So looking at the spirit of the agreement, it to me appeared the parties intended to have this defendant sentenced to 15 years, the mandatory minimum calculations.

Now, I guess getting back to the relevant conduct, the stipulation actually helps the Government's motion because with

the calculation at the high end of 168 months as calculated by Ms. Danni, you then add to that the 60 months which is not taken into account, and you arrive at a guideline calculation or a range that would be somewhere around 228 months which is significantly higher than the 180 months, or 15 years, intended by the plea agreement.

And so in good faith I believe it necessary to file this motion, request that the Court, in addition to his substantial assistance that avoided the stacked 924(c), to reduce his guideline calculation to a range that would allow the Court to sentence the defendant at the 15-year intended mark. And we have done that. I added the additional levels to 35, I believe came down three to 32, and then within that range you can sentence the defendant at a 15-year minimum mandatory and that's where the minimum mandatory would stick.

So with that said, the Government acknowledges as well that in order to get from 228 months down to 180 months, we open the door for a nonminimum mandatory sentencing by this Court, which we acknowledge that the effect of our motion is opening the door to a discretionary departure down from the 15-year minimum mandatories. That under the case law is the only grounds for a departure that the Court can make at this point, not the 3553(a) factors or other guideline factors, but taking into account the defendant's substantial assistance does the Court believe that this defendant deserves a departure

further than what the Government at this point has agreed to make in its motion. And that we will leave to the Court's discretion.

As the Court is aware, we have a plea agreement where we intended the defendant to receive a 15-year sentence. He testified with regard to that fact at the trial of his codefendants, and to accomplish that, we filed the motion.

THE COURT: Thank you. Is there anything -- any response by the defendant on the Government's substantial assistance motion?

MR. BEDUHN: No, Your Honor. We are just thankful that the Government decided to file the motion.

THE COURT: All right. The Court will grant the Government's substantial assistance motion within the context of that motion as well as recognized in the plea agreement. The defendant does have the right to request that the Court depart further than what the Government recommends which was the 180-month sentence that the Government seemed to anticipate, and I believe that I recall Mr. Morgan recognized that as well in the context of his testimony.

So the Court will grant the Government's substantial assistance motion.

And, Mr. Beduhn, do you have additional argument for the appropriate disposition of this?

MR. BEDUHN: Yes, Your Honor.

THE COURT: If you would like to proceed.

MR. BEDUHN: Thank you, Your Honor, may it please the Court, Mr. Murray. Your Honor, we were previously here in December for the sentencing, and at that point I believe that's when the Court asked or inquired from myself and my client, Mr. Morgan, whether or not we would like the Court to reject the plea agreement, which kind of led us here two months later.

Prior to that hearing on behalf of Mr. Morgan, I did file a sentencing memorandum that was asking for a downward departure away from the mandatory minimums and the Court as well as myself recognized that the law might not be there. But, however, with the Government filing this motion, the 5K motion pursuant to Rule 5K1.1 and 3553(e), the Court now has discretion.

I think it is important to note that the Court, who has sat through the four and a half week trial, had the opportunity to listen to Mr. Morgan's testimony for a day and a half, put through a rigorous cross-examination by multiple defense attorneys, that the Court is in the prime position to use its discretion to sentence Mr. Morgan to what she believes is appropriate.

Your Honor, I'm not going to rehash what I wrote in the sentencing memorandums nor all the character letters that came in in support. I know based off our last hearing in December that the Court is well aware of what we are arguing.

I would just like to highlight a few of the things why we believe Mr. Morgan has provided superior acceptance of responsibility which leads to substantial assistance with the Government.

When Mr. Morgan was originally arrested back in September with the search warrant to his house and even prior to the months up to that, Mr. Morgan was in contact with the Department of Criminal Investigation, actually went as far as signing off on a confidential informant agreement. He continued to have contact with Special Agent Mike Hall up through the search warrant.

Once the search warrant was executed, up through that point in time he actually started speaking with law enforcement. I would note other than Ms. Perkins in this case who was wearing a wire over in Sheridan County, Mr. Morgan was the first defendant to step up to the plate and proffer testimony. He did that in January of 2011 with the Department -- Drug Enforcement Agency as well as several officers from the Division of Criminal Investigation as well as myself and Mr. Blythe. But that all took place in January of 2011.

Shortly after that, to provide greater assistance, through the course of that and when he was in Scottsbluff, Nebraska, he was also able to pass on more information to myself that I was able to share with Mr. Fun in regards to the

codefendants. We sat at length in Casper, Wyoming, for a full day also in trial preparation in the late spring of 2011 which ultimately led up to this, which led up to the plea agreement that's before the Court.

And as the Court and Mr. Murray recognize, the plea agreement in its own terms allows us to ask for a further downward departure. I think it is -- the relevant conduct that was brought up from that second conspiracy is interesting because I think it really characterizes where Mr. Morgan was during the course of this conspiracy with Mr. Velasquez.

Once Mr. Velasquez was incarcerated in the Park County Detention Center, Mr. Morgan did seek out more methamphetamine. He was an addict. What that shows is addict level behavior throughout the course of the conspiracy. And as the testimony was provided to the Court throughout the course of the trial, Mr. Morgan acknowledged that Mr. Velasquez actually owed him money, but Mr. Morgan was willing to give him more money just so he could get his fix. He didn't have any control of the purchases or any direct lines of communication to Fresno, California. He was never a member of the Fresno Bulldogs. He was simply the addict who was delivering in very small quantities. And when his source dried up due to that addict level behavior, he went on and tried to find a new source.

I think as a character reference -- as the character letters reference, this was aberrant behavior on behalf of

Mr. Morgan. It was well outside of what he had previously done up through his high school years. We think that there is somewhat of an overstatement of Mr. Morgan's culpability in this conspiracy, placing him, as we would describe him, at an addict level, not having any direct lines of communication with Fresno, California, being unaware of the purchases other than the boasts done by other codefendants, he was unaware of the quantities that were being shipped to Sheridan, Wyoming. He had no idea of what sort of purity the methamphetamine was. He was on the lower tier of the conspiracy. The conduct, again, it just exhibits the behavior of an addict.

The Court is in the best position to also look at Mr. Morgan's substantial assistance that he provided to the Government when he was sitting there. But it brings me back. When I first walked into the courtroom today, I remember a motion hearing, request for a James hearing was done, and myself and Mr. Morgan and all of the rest of the codefendants were sitting at this table. At that point in time, that was in the summer of 2011, but I remember something that happened there. And Mr. Morgan was as white as the Marshal's shirt when it occurred. We were under the understanding coming down to this hearing that Mr. Morgan wasn't going to be outed at that point.

And in response to one of the motions that other defense counsel filed, Mr. Morgan was outed. It designated

when we proffered back in January 2011. And as that piece of paper was shuffled in between the codefendants, I believe both Mr. Morgan and myself were concerned for his safety as well as ours. Actually Marshals were brought in at that time. I mean, we came down to this hearing under the guise that the Government was still there to protect us. But that's when we were outed.

It is just another key factor, I believe, through the course of this long, long case of what type of assistance Mr. Morgan was going to endure, that we were going to sit here with other codefendants and defense counsel, knowing that we were already working on a plea agreement, knowing that we already proffered, and then we were outed at the last second.

It made for an interesting hearing, at least from our perspective. But Mr. Morgan has provided very substantial assistance and pursuant to 3553 Subsection (e), the Court is allowed to downward departure, and we would ask that the Court would. In my sentencing memorandum we're asking for I guess at this point it would be a three-level departure at the level 29 which would put Mr. Morgan under the ten-year-or-under range. And that's what we request.

For the supervised release we believe three or five years is appropriate. We think the fines should be minimal. I've noticed that from the other codefendants' sentencing it has kind of been a little up and down between 500 and $1,000,

but we would leave that to the discretion of the Court as well.

Your Honor, we do believe looking at the other codefendants and the sentences they received, the codefendant that's most like Mr. Morgan through this is Ms. Perkins, Ms. Kimberly Perkins, and I believe she received something of an 82-month sentence, if I remember correctly. And that's what we're really striving for here. That's what we think is appropriate for Mr. Morgan.

The only step Ms. Perkins took that was beyond Mr. Morgan in the case, from my understanding, was wearing a wire because she got wrapped up a little bit sooner than Mr. Morgan did. On the other hand, you also look at the 924(c) charges -- charges that were originally indicted on Mr. Morgan, and, Your Honor, I think in the sentencing memorandum what we were trying to explain to the Court in regards to the guns is, you know, Mr. Morgan, he comes from Greybull, Wyoming, south of Greybull, where he was raised in the country outside of the city limits and unfortunately, firearms were part of the daily life. I don't think there was any indication through the testimony or through other CIs that he ever bolstered (sic) or waved or threatened anyone with the firearm. He just happened to have the firearms with him at almost all times. Unfortunately that's his way of living. That's a lot of ways of living here in Wyoming.

Now I'm not here to argue what Congress in regards to

the 924(c) charges and what purposes they are, but, you know, within this district and at least under the circumstances of Mr. Morgan, I think it goes above and beyond what the Congress was considering when they drafted that legislation. So, Your Honor, we would ask that Mr. Morgan be sentenced to something similar to Ms. Perkins as we do believe that's appropriate.

Mr. Morgan would like to also address the Court. And I'm not sure if that's the time to do that or if after Mr. Murray has rebuttal.

THE COURT: I will leave that up to you. He can address the Court now, or he can wait until the Government responds.

MR. BEDUHN: Your Honor, if we could have afterwards, we would appreciate it. Thank you, Your Honor.

THE COURT: Thank you.

MR. MURRAY: Your Honor, I have nothing further. We have asked -- we have filed our motion. We have acknowledged the -- made our recommendation in the spirit of the plea agreement. We have acknowledged that the Court can depart further under the plea agreement and under the statutes and really have nothing more to offer. Thank you.

THE COURT: Thank you.

MR. MURRAY: I think I do have to make one comment, though. I was not present for Mr. Morgan's testimony; however, all information that I have that I have received is that both

his testimony as well as his work with the agents was very good, and he is well deserving of the substantial assistance motion.

THE COURT: Thank you.

THE DEFENDANT: Forgive me if my voice is a little shaky. I'm pretty nervous.

THE COURT: Just take your time.

THE DEFENDANT: Originally I wanted just to make this statement from memory, but given this is probably one of the scariest, most nerve-racking days of my life, I decided it would be a good idea if I just -- I wrote it all down, so here it is. I want to start off by saying that I'm sorry for everything I've done, not only for my instant offenses but for the bad decisions I've made during the recent years of my life.

I want to apologize to society, to the Court, and most of all my family. I have already been in jail for 14 months. Sorry. Excuse me. And have been left with plenty of time to reflect on the past. Above all else, I regret the effects that my thoughtless decisions have had on my family. Words can never express how much I miss them or how sad it makes me to think about the upcoming years that we will be apart.

When law enforcement came to my house with search warrants, I was overwhelmed with emotions. I was terrified at first with the whole situation that evolved around me. Once I got over the initial fear of everything, I began to think about

how lucky I was DCI had come to my house, terrified me and found little more than paraphernalia. I was in the grips of addiction, and I had just got the help that I needed to kick my habit and get my -- get back to my life. I thought about how fortunate I had been that I didn't get in any serious trouble, but at the same time I had been scared straight, so to speak.

I moved back in with my parents and got my life back on track. I went to work for my grandfather and for his fencing business and was happy and living a drug-free life. All that came to an abrupt end in November of 2010. I wasn't as lucky as I first thought. I thought that I had been treated with mercy given my participation with DCI as a confidential informant only to find out I was looking at potential -- at potential decades in prison. I had been federally indicted. Nonetheless, I'm grateful for getting caught and getting help. I needed to break the cycle.

I can only hope that the Court can see that I'm not a bad person and that my charges greatly overstate the seriousness of my conduct. My faith and mind have been renewed, and I concentrate every day on bettering myself. I have accepted the fact that the past is the past and that no matter how much I would like to go back and make all the right decisions, I simply can't.

I beg the Court to allow some measure of forgiveness for the mistakes I've made and to take a look at the person I

am deep down when imposing its sentence today. I am not an evil person, and it is not in my nature to hurt people. I am a country boy, and I grew up spending countless time in the outdoors. I am a hunter and a fisherman. And I can't stress enough that the firearms I owned were for nothing more than an average day of recreation for me and my friends.

I never threatened anyone with a gun, and I regret the thought that anyone who knows me could ever perceive my possession of them as intimidating or even relevant to drugs in any way.

I am not a gang member, and I'm not some thug. I know the extent of my involvement, and it breaks my heart to know that I am held responsible for a gang hierarchy's cumulative weight of 1.5 to 5 kilograms. I'm no doubt guilty of distributing very small amounts of methamphetamine over a period of time, but I feel that the relevant conduct stipulated seriously overstates my involvement.

With all the relevant factors considered, Your Honor, I feel that the adequate deterrence and rehabilitation could be achieved through a much smaller sentence than ten years and still acknowledge the seriousness of my offense and provide for just punishment.

And that's all I have, Your Honor.

THE COURT: Thank you.

MR. BEDUHN: Your Honor, I did not help him write that

whatsoever.

THE COURT: Thank you. I know your family has traveled yet again a long distance to be here for the conclusion of this. Mr. and Mrs. Morgan or Melissa, if you have anything that you want to say, I have -- if I'm remembering correctly, I believe Melissa spoke at the last hearing that was continued. But if you have anything to say, please come up. I have all the letters written on behalf of friends and family members that are attached to Mr. Beduhn's sentencing memorandum.

MS. MORGAN: Your Honor, I can say so many things about my brother. He's really the best person that I know. He's not a dangerous person. He has a very big heart and I just -- I really hope that you can see that and take that into consideration.

THE COURT: Thank you, Melissa.

MS. MORGAN: Thank you.

MRS. MORGAN: Your Honor, thank you for listening to everything that everybody has good to say about Johnny. Everything that's in the letters and people are saying are very true. He is a good person, and I just hope and pray that the Court has mercy. And when he does come home I will do everything to support him. He will be beside me.

Our family has learned a lot. Gotten a lot wiser on real bad guys. Thank you.

THE COURT: And, Mrs. Morgan, could you remind the Court of your first name so we can get it correctly in the record?

MRS. MORGAN: I'm Lisa Renee Morgan.

THE COURT: Thank you. Yes, and I see that you have -- you had written a letter to the Court as well. So I just couldn't find it in my stack of papers.

MR. MORGAN: Your Honor. I'm John Morgan, John's dad. I just would like to let you know that he is a good kid, and he's just made some really poor choices. And I believe that the difference between the good kid and a bad kid is a good kid didn't get caught. I know maybe that sounds crazy, but I've seen it, you know, where we live.

And I would like to also reiterate what Nick said about the guns. You know, he's not a thug out threatening people with guns. He's had his own firearms since -- I don't know. He was probably 7 or 8 when I bought him his first .22. And I believe that the firearms that he had he used for his enjoyment. And, you know, I just hope that you can see that he truly is a good person. Thank you.

THE COURT: Thank you, Mr. Morgan. Again, I appreciate your traveling such a long way again for this sentencing.

In looking at all the letters written on your behalf, Johnny, you have a lot of people who love and care about you

and care about what happens to you. And you are a lucky person in that respect. I am happy the Government filed a motion for a downward departure so that we can address what from the Court's perspective seemed to be an overly harsh sentence, given the minimum mandatory sentences that have been enacted by Congress.

Now that we are at -- now that we have the motion, we are at a sentencing recommendation by the Government of 15 years which is noted in the plea agreement, and at this time, then, the Court is left considering the substantial assistance factors that are in the guidelines as opposed to the other factors that can come in for consideration under request for variances and other departures.

With the Court's change to the relevant conduct, in addressing the two counts we're here to talk about today, which is the drug conspiracy count and the firearms count, we have a guideline recommendation of 108 to 135 months for the drug conspiracy count with the Government's motion for substantial assistance. So I feel like we can look at the guideline range as a reasonable range for this particular conduct. And we are at a 60-month sentence for Count 7, the gun count.

The Court in looking at your -- what is an appropriate reduction, the Court listened to your testimony. As Mr. Beduhn noted, you testified against several individuals that had been charged, and I believe your testimony was significant and

useful for the reasons the Government notes in its motion. It was a wilting cross-examination, and I felt like you said what was the truth and you explained actions and conduct that were being thrown at you, to your credit, for a man of your age.

It is not easy to agree to cooperate with the authorities in the prosecution of others and the effect that has on you and could have on you into the future. But add to that the fact that your substantial assistance was more than just convincing others to plead guilty, it led to a trial of coconspirators and your testimony of the conduct of coconspirators.

I do believe that your testimony was truthful, complete and was reliable to the extent that we can make a reliability finding without really knowing how the jury weighed credibility and witness testimony and consider all the factors all the jury considers. But from my perspective, your explanation of even that phone call made sense from a mother's viewpoint in terms of why you did what you did and what you were intending to do and what you were not intending to do, and so I would weight that significantly in your favor.

You certainly were involved intimately with Mr. Velasquez and spoke of that and the knowledge that you had as to his involvement as well as other coconspirators. And I give you a significant amount of credit for being timely in your assistance. And I remember one particular hearing where I

believe -- I believe it was Mr. Beduhn asked to be excused and indicated that -- how you were planning on pleading and I knew that -- then that you were cooperating with the Government and so that assistance was timely.

With that, I believe it is appropriate to go beyond the departure that the Government would afford on Count 1 -- and I will address these counts separately, and maybe I will -- let me address Count 7, the gun count. I understand and appreciate your explanation as well as your father's explanation about the role guns and firearms have played in your life. I grew up in a hunting family as well. However, I am of the strong opinion that guns and drugs are a very, very dangerous combination, and the gun count not only as to you, it affects you, but your guns ended up being brought in to affect or potentially affect Mr. Velasquez as well in terms of his conviction of that gun count.

And I believe that the guns and the extent of guns in the context of this drug conspiracy just simply cannot be ignored or factored away or departed away. They make a drug conspiracy so much more dangerous, and I think it is foreseeable that it has that effect. Even if you felt like your conduct was not meant in any way to be intimidating to another person -- you to me don't seem like a very intimidating person. I believe your parents and your sister and their comments about you are a young man with a good, kind heart.

But to have those guns brought into the -- brought into this conspiracy, I think, was just so much more than a mistake, and consequently, I will not depart downward on the -- on Count 7 on the 60-month count there.

As to the conspiracy count, I will afford you a six-level departure downward to bring you to another 60 months. And this is a, I know, a bitter pill for a young man who is looking at 10 years. I believe that that is a just disposition of a case where in the dismissal of the other three counts, that alone and consistent with Mr. Fun's statement and consistent really with your statements in trial was a significant benefit to you. But I cannot take that additional gun count away or depart downward given the amount -- the number of guns that were involved and how they ended up with other individuals who were more dangerous than you are.

So that's the explanation and overview of my perspective on what is an appropriate disposition in this case. Again, as a mother with children your ages, and they have certainly made their own mistakes in life, it is with a deep heart that I end up at this length because it is a very long time for a very young man.

John, with that said, I will state sentence and turn again to the attorneys for any correction or revision. I guess before I state sentence, perhaps the U.S. Attorney's Office could help me understand the effect of any action in changing

the relevant conduct stipulation because there is a waiver of appeal. The way it is worded, though, it seems to -- even though I went lower, one would -- could argue or perceive that the waiver would be still in effect, and maybe I don't have to -- I certainly don't have to resolve that, but I did want to alert you to that.

I think I will go ahead and advise you on the deadlines for filing any Notice of Appeal, and if you feel like you have an appeal right, given what the Court did on relevant conduct and the language in paragraph 7 of the plea agreement, then you can make that argument, I guess, to the Court of Appeals.

Any disagreement, Mr. Murray, with that?

MR. MURRAY: No, Your Honor, I believe it is appropriate for the Court of his right to appeal the sentence.

THE COURT: All right. Thank you.

Mr. Beduhn, is there any sentencing recommendation in terms of placement?

MR. BEDUHN: Your Honor, just two things. Mr. Morgan would like to be sentenced to Yankton. And he recognizes it might be some years before he gets there, but that would provide him closeness to his family in South Dakota.

And the second thing I did forget to mention, and I'm not sure if the Court is aware, but currently as of today Mr. Morgan has 441 days credit. Thank you, Your Honor.

THE COURT: And I end up not messing around with the credit. The Bureau of Prisons will calculate that and afford you credit for time within the context of your sentence. And so the sentence that I state today won't account for that credit because that's administered by the Bureau of Prisons.

I know that Mr. Morgan's addiction embedded him in this conspiracy. I did not see or I can't remember whether there was a request for consideration for RDATP. With the gun count it won't give him credit, but if there's a request for consideration, I wanted to put that in the judgment if that was --

MR. BEDUHN: And, Your Honor, we recognize that he won't receive additional credit for the time, but he would make that request for the RDATP program.

THE COURT: All right. Thank you.

Okay. Well, let me state sentence and then we will turn for -- to Counsel for any amendments or corrections to the sentence as stated.

Pursuant to the Sentencing Reform Act of 1984 and those factors set forth in 18 USC Section 3553(e), and consistent with the Government's motion pursuant to that statute and Sentencing Guideline 5K1.1, it is the judgment of this Court that the Defendant John Michael Morgan is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 60 months as to Count 1 and 60 months

as to Count 7, to be served consecutively.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of five years as to both Counts 1 and 7, to be served concurrently.

While on supervised release, the defendant shall comply with the standard and the mandatory conditions adopted by this court for supervision and shall also comply with the following special conditions.

The defendant shall participate in and successfully complete substance abuse treatment in a program approved by the U.S. Probation Office and shall abide by the rules, requirements and conditions of the treatment program until successfully completed or until the probation office discharges him from treatment. This may include testing to determine whether the defendant has reverted to the use of controlled substances.

As a component of the defendant's treatment and testing program, the defendant shall pay a one-time fee of $250 to partially defray the costs of treatment and/or drug testing. Monetary payments made by the defendant shall be applied to this fee only after all other court-ordered monetary obligations are fulfilled.

Payment of the fee shall be made by money order or cashier's check to the Clerk of the District Court, 2120 Capitol Avenue, Second Floor, Cheyenne, Wyoming, 82001,

utilizing the payment coupon provided by the U.S. Probation Office. This condition is waived in the event the defendant is supervised by a district other than Wyoming.

The defendant shall submit to drug and alcohol testing as directed by the U.S. Probation Office and shall comply with specific copays imposed pursuant to district policy for failing to comply with drug testing.

The defendant shall refrain from any use or possession of alcohol and/or other intoxicants, including over-the-counter medications used contrary to the recommended dosage or the intentional inhalation of any substance prescribed or otherwise without the permission of the probation office. Additionally, the defendant shall not enter establishments whose primary income is derived from the sale of alcohol.

At the discretion of the U.S. Probation Officer, the defendant shall participate in a cognitive behavioral treatment program that may include, but is not limited to, moral reconation therapy, cognitive thinking, Thinking For A Change or interactive journalling. The defendant shall actively participate in treatment until successfully discharged or until the U.S. Probation officer has excused the defendant from the treatment regimen.

The defendant shall submit his person, residence, office or vehicle to a search conducted by a U.S. Probation officer at a reasonable time and in a reasonable manner upon

reasonable suspicion of contraband or evidence of a violation of these conditions. Failure to submit to a search may be grounds for a revocation, and the defendant should warn all other occupants that the premises may be searched pursuant to this condition.

The Court finds the defendant does not have the ability to pay a fine within the guideline range but could pay a reduced fine in the amount of $400.

It is ordered the defendant pay a special assessment of $100 per count for a total of $200 which shall be due immediately.

The defendant shall participate in the Bureau of Prisons Inmate Financial Responsibility Program to pay his fine and special assessment. All monetary payments shall be made payable by cashier's check or money order to the Clerk of the District Court, 2120 Capitol Avenue, Second Floor, Cheyenne, Wyoming, 82001. The defendant shall pay all financial obligations immediately, and any obligations not paid immediately or through the Bureau of Prisons Financial Responsibility Program shall be paid beginning the month following his release from confinement in monthly installments of not less than $25.

The Court will make a strong recommendation that the Bureau of Prisons give consideration to allowing Mr. Morgan to participate in the 500-hour Residential Drug Abuse Program

administered by the Bureau of Prisons.

The Court will also ask for consideration by the Bureau of Prisons for placement of this defendant as close as possible to his family to allow for visitation, with consideration being given to Yankton, South Dakota, at an appropriate time consistent with this defendant's classification by the Bureau of Prisons.

The defendant is advised that he has 14 days from the date of entry of judgment to file any Notice of Appeal.

Is there any reason other than reasons previously argued as to why the sentence should not be imposed as stated?

Anything from the Government?

MR. MURRAY: No, Your Honor. Thank you.

THE COURT: Thank you.

MR. BEDUHN: Not on behalf of Mr. Morgan. Thank you, Your Honor.

THE COURT: All right. Mr. Murray, we have the remaining three counts for the Court's consideration.

MR. MURRAY: Yes, Your Honor. The Government would, pursuant to the plea agreement, move for dismissal of Counts 2, 4 and 8 in the Indictment.

THE COURT: Those counts will be dismissed consistent with the Government's motion.

Is there anything further?

MR. MURRAY: Not from the Government, Your Honor.

Thank you.

THE COURT: Mr. Beduhn.

MR. BEDUHN: No, Your Honor. Thank you.

THE COURT: Thank you. Good luck, Johnny.

And good luck to you, Mr. and Mrs. Morgan.

Mr. Morgan, I will remand you to the custody of the Marshal Service. Again, good luck to you. And I wish you and your family the best.

THE DEFENDANT: Thank you.

THE COURT: This concludes the sentencing in Docket 10-CR-329 concerning John Michael Morgan. The Court will stand in recess until call.

(Sentencing proceedings concluded 5:05 p.m., February 6, 2012.)

C E R T I F I C A T E

I, JANET DAVIS, Federal Official Court Reporter for the United States District Court for the District of Wyoming, a Registered Merit Reporter and Federal Certified Realtime Reporter, do hereby certify that I reported by machine shorthand the foregoing proceedings contained herein on the aforementioned subject on the date herein set forth, and that the foregoing pages constitute a full, true and correct transcript.

Dated this 17th day of October, 2012.

/s/ Janet Davis

JANET DAVIS
United States Court Reporter
Registered Merit Reporter
Federal Certified Realtime Reporter